

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

725I0486

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

HB 1111 - 02/13/2003

Introduced by: Representatives Michels, Cradduck, Gillespie, Glenski, Konold, McCoy, Peterson (Bill), Sebert, Smidt, Thompson, Van Gerpen, and Wick and Senators Diedrich (Larry), Ham, Jaspers, Kleven, McCracken, Sutton (Dan), and Vitter

1 FOR AN ACT ENTITLED, An Act to authorize construction management services to be
2 employed on public improvement projects.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 For the purposes of this chapter, the term, construction management, means any project
7 delivery system based on an agreement whereby a construction manager provides leadership to
8 the construction process through a series of services to the public corporation.

9 Section 2. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 For the purpose of this chapter, the term, construction management services, means the
12 following:

13 (1) Services provided in the planning and design phases of a public improvement project
14 including the following:



- 1 (a) Consulting with, advising, assisting, and making recommendations to the public
- 2 corporation and architect or engineer on all aspects of planning for project
- 3 construction;
- 4 (b) Reviewing all plans and specifications as they are being developed and making
- 5 recommendations with respect to construction feasibility, availability of
- 6 material and labor, time requirements for procurement and construction, and
- 7 projected costs;
- 8 (c) Making, reviewing, and refining budget estimates based on the public
- 9 corporation's program and other available information;
- 10 (d) Making recommendations to the public corporation and the architect or
- 11 engineer regarding the division of work in the plans and specifications to
- 12 facilitate bidding and awarding of contracts;
- 13 (e) Soliciting the interest of capable contractors and assisting the public
- 14 corporation in taking bids on the project;
- 15 (f) Analyzing the bids received and awarding contracts; and
- 16 (g) Preparing and monitoring a progress schedule during the design phase of the
- 17 project and preparation of a proposed construction schedule; and
- 18 (2) Services provided in the construction phase of the public improvement project
- 19 including the following:
- 20 (a) Maintaining competent supervisory staff to coordinate and provide general
- 21 direction of the work and progress of the contractors on the project;
- 22 (b) Observing the work as it is being performed for general conformance with
- 23 working drawings and specifications;
- 24 (c) Establishing procedures for coordinating among the public corporation,

1 architect or engineer, contractors, and construction manager with respect to
2 all aspects of the project and implementing labor policy in conformance with
3 the requirements of the public corporation's policy and making
4 recommendations;

5 (d) Reviewing and processing all applications for payment by involved contractors
6 and material suppliers in accordance with the terms of the contract;

7 (e) Making recommendations for and processing requests for changes in the work
8 and maintaining records of change orders;

9 (f) Scheduling and conducting job meetings to ensure orderly progress of the
10 work;

11 (g) Developing and monitoring a project progress schedule, coordinating and
12 expediting the work of all contractors, and providing periodic status reports to
13 the owner and the architect and engineer; and

14 (h) Establishing and maintaining a cost control system and conducting meetings to
15 review costs.

16 Section 3. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 For the purposes of this chapter, the term, construction manager, means any person or entity
19 providing construction management services for a public corporation, and either a construction
20 manager-agent or construction manager-at-risk.

21 Section 4. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 For the purposes of this chapter, the term, construction manager-agent, means any
24 construction manager that provides construction management services to a public corporation

1 in a fiduciary capacity. No construction manager-agent may contract directly with any contractor
2 or supplier for the project.

3 Section 5. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 For the purposes of this chapter, the term, construction manager-at-risk, means any
6 construction manager that assumes the risk for construction, rehabilitation, alteration, or repair
7 of a public improvement, and provides construction management services to the public
8 corporation. The construction manager-at-risk shall directly contract with subcontractors and
9 suppliers for the project.

10 Section 6. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 Any public corporation may engage a construction manager if planning, designing, or
13 constructing a public improvement, or if improving, altering, or repairing a public improvement.
14 However, no public corporation is required to engage a construction manager.

15 Section 7. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 Unless the construction manager-agent is an employee of the public corporation and provides
18 the construction management services pursuant to such employment, no public corporation may
19 engage the services of a construction manager except as follows:

20 (1) The public corporation shall first make the following determinations:

21 (a) That it is in the public interest to utilize the services of a construction manager;
22 and

23 (b) That the construction management services would not unreasonably duplicate
24 and would be in addition to the normal scope of separate architect or engineer

1 contracts;

2 (2) Notwithstanding any other provisions of this chapter, no construction manager may
3 contract to perform actual construction on the project, except as follows:

4 (a) The construction manager may perform general conditions of the construction
5 contract as required by the owner;

6 (b) The construction manager is a construction manager-at-risk and was solicited
7 through a qualification-based request for proposals method of procurement as
8 provided in section 8 of this Act and the construction manager-at-risk, for any
9 actual construction contracted by the construction manager-at-risk to be
10 performed on the project, provides payment and performance bonds and
11 competitively bids the work as required by any statute governing bidding and
12 bonding for public improvement projects;

13 (c) Pursuant to a contract awarded on an emergency basis, pursuant to § 5-18-3.1;
14 or

15 (d) Pursuant to a contract negotiated pursuant to § 5-18-9.1 or 5-18-9.2; and

16 (3) No person, firm, or corporation may act as a construction manager-agent and also as
17 a contractor on any public improvement, except as follows:

18 (a) Pursuant to a contract awarded on an emergency basis, pursuant to § 5-18-3.1;
19 or

20 (b) Pursuant to a contract negotiated pursuant to § 5-18-9.1 or 5-18-9.2.

21 Section 8. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 Each qualification based request for proposals required by subsection 7(2)(b) of this Act to
24 enter into a construction manager-at-risk services contract where the construction manager-at-

1 risk intends to actually perform construction on the project, shall meet the following criteria:

2 (1) The public corporation shall, prior to issuing any request for proposals to enter in a
3 construction management services contract, establish and publish procedures for the
4 solicitation and award of such contracts, which procedures shall include the following:

5 (a) The procedures and standards to be used to qualify construction managers;

6 (b) The procedures for preparing and submitting proposals;

7 (c) The procedures for evaluating proposals;

8 (d) The procedures for negotiations between the public corporation and those
9 submitting proposals prior to the acceptance of a proposal. The procedures
10 shall contain safeguards to preserve the confidential information and
11 proprietary information supplied by those submitting proposals; and

12 (e) The procedures for awarding construction management services contracts;

13 (2) A request for proposals to enter into a construction management services contract
14 shall contain the following elements:

15 (a) The identity of the public corporation;

16 (b) A description of the proposed public improvement;

17 (c) A description of the qualifications the construction manager will be required
18 to have;

19 (d) The procedures to be followed for submitting proposals, the criteria for
20 evaluation of a proposal and its relative weight, and procedures for making
21 awards;

22 (e) The proposed terms and conditions for the construction management services
23 contract, including a description of the scope of services to be provided;

24 (3) Notice of any request for proposals shall be advertised in accordance with the

1 provisions of § 5-18-3;

2 (4) After obtaining and evaluating proposals, a public corporation may accept the
3 proposal it considers the most advantageous to the public corporation. Acceptance
4 of a proposal shall be by written notice to the construction manager submitting the
5 accepted proposal, and by simultaneously notifying in writing the other construction
6 managers that their proposals were not accepted; and

7 (5) The public corporation shall reserve the right to reject any or all proposals submitted.

8 Section 9. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 Each contract for a public improvement shall have a licensed design professional actively
11 involved in the project from the start of design through final completion as required by chapter
12 36-18A.